

EXHIBIT 171

Tootell, Michael

October 25, 2007

Chicago, IL

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

-----X
In re: PHARMACEUTICAL) MDL No. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) No. 01-12257-PBS
-----X

VIDEOTAPED DEPOSITION OF MICHAEL TOOTELL

OCTOBER 25, 2007

CHICAGO, ILLINOIS

Videotaped Deposition of MICHAEL TOOTELL, at
71 South Wacker Drive, 32nd Floor, Chicago,
Illinois, commencing at 9:00 a.m. on Thursday,
October 25, 2007, before Donna M. Kazaitis, RPR,
CSR No. 084-003145.

Henderson Legal Services
202-220-4158

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<p>1 APPEARANCES OF COUNSEL:</p> <p>2</p> <p>3 FOR THE UNITED STATES:</p> <p>4</p> <p>5 U.S. DEPARTMENT OF JUSTICE</p> <p>6 CIVIL DIVISION</p> <p>7 BY: MS. ANN ST. PETER-GRIFFITH</p> <p>8 99 N.E. 4th Street</p> <p>9 Miami, Florida 33132</p> <p>10 (305) 961-9003</p> <p>11 ann.stpeter-griffith@usdoj.gov</p> <p>12</p> <p>13 FOR THE STATE OF CALIFORNIA:</p> <p>14</p> <p>15 STATE OF CALIFORNIA DEPARTMENT OF JUSTICE</p> <p>16 BUREAU OF MEDI-CAL FRAUD & ELDER ABUSE</p> <p>17 BY: MR. ELISEO SISNEROS</p> <p>18 (via teleconference)</p> <p>19 110 West A Street, Suite 1100</p> <p>20 San Diego, California 92101</p> <p>21 (619) 688-6043</p> <p>22 eliseo.sisneros@doj.ca.gov</p>	<p>1 APPEARANCES OF COUNSEL: (CONTINUED)</p> <p>2</p> <p>3 FOR THE DEPONENT:</p> <p>4</p> <p>5 MAYER BROWN LLP</p> <p>6 BY: MR. JAMES R. FERGUSON</p> <p>7 71 South Wacker Drive</p> <p>8 Chicago, Illinois 60606</p> <p>9 (312) 701-7282</p> <p>10 jferguson@mayerbrownrowe.com</p> <p>11</p> <p>12</p> <p>13 ALSO PRESENT:</p> <p>14</p> <p>15 Anthony Micheletto, Videographer</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
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<p>1 APPEARANCES OF COUNSEL: (CONTINUED)</p> <p>2</p> <p>3 FOR THE RELATOR VEN-A-CARE OF THE FLORIDA</p> <p>4 KEYS, INC.:</p> <p>5</p> <p>6 ANDERSON LLC</p> <p>7 BY: MR. C. JARRETT ANDERSON</p> <p>8 1300 Guadalupe, Suite 103</p> <p>9 Austin, Texas 78701</p> <p>10 (512) 469-9191</p> <p>11</p> <p>12 FOR ABBOTT LABORATORIES:</p> <p>13</p> <p>14 JONES DAY</p> <p>15 BY: MR. JASON G. WINCHESTER</p> <p>16 77 West Wacker Drive</p> <p>17 Chicago, Illinois 60601-1692</p> <p>18 (312) 782-3939</p> <p>19 jgwinchester@jonesday.com</p> <p>20</p> <p>21</p> <p>22 (CONTINUED)</p>	<p>1 I N D E X</p> <p>2</p> <p>3 WITNESS: MICHAEL TOOTELL PAGE</p> <p>4 Examination By Ms. St. Peter-Griffith..... 007</p> <p>5 Examination By Mr. Anderson..... 222</p> <p>6</p> <p>7 E X H I B I T S</p> <p>8 NUMBER DESCRIPTION PAGE</p> <p>9 Exhibit Tootell 001, MT 01286-01510..... 009</p> <p>10 Exhibit Tootell 002, Two CDs, ABT-DOJ-E 0545292</p> <p>11 -941 and ABT-DOJ 0309695</p> <p>12 -997..... 011</p> <p>13 Exhibit Tootell 003, MT 01260-01261..... 030</p> <p>14 Exhibit Tootell 004, ABT-DOJ-E 0545739-770..... 114</p> <p>15 Exhibit Tootell 005, ABT-DOJ-E 0545771-791..... 153</p> <p>16 Exhibit Tootell 006, ABT-DOJ-E 0545901-922..... 167</p> <p>17 Exhibit Tootell 007, ABT-DOJ-E 0545899-900..... 188</p> <p>18 Exhibit Tootell 008, ABT-DOJ-E 0545620-653..... 216</p> <p>19 Exhibit Tootell 009, ABT 52704-707..... 295</p> <p>20 Exhibit Tootell 010, ABT 52795-797..... 299</p> <p>21 Exhibit Tootell 011, ABT 53177-180..... 303</p> <p>22 Exhibit Tootell 012, ABT-DOJ 296250-256..... 307</p>

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<p style="text-align: right;">Page 54</p> <p>1 A. I'm not sure which decisions you're 2 talking about. This is obviously an industry 3 issue that went on for at least fifteen years 4 now. 5 Q. Well, let me ask you this: Did you 6 work with any of your reimbursement counterparts 7 in other divisions on Medicaid and Medicare 8 policy issues that affected Abbott as a whole? 9 A. Yes. 10 Q. What issues did you work with them on? 11 A. There were many. I'd like to be more 12 specific about -- 13 Q. Well, I'm asking you what your 14 recollection of those many issues were. 15 THE WITNESS: Let's go back to the 16 details of the question, please. 17 MS. ST. PETER-GRIFFITH: Can you read 18 it back. 19 (WHEREUPON said record was read 20 back as requested.) 21 THE WITNESS: Yes, I did. I've given 22 you a couple of examples about inherent</p>	<p style="text-align: right;">Page 56</p> <p>1 Reimbursement Task Force? 2 A. I believe that group met in the early 3 2000s, but I don't remember its content or its 4 membership. 5 Q. Do you remember any work that you did 6 on either of those organizations? 7 A. No, I don't. 8 Q. Was your work with the Medicare Working 9 Group in the '90s, or the Medicare/Medicaid 10 Reimbursement Task Force in the early 2000s let's 11 say, was that part of your job responsibilities? 12 A. Yes. 13 Q. How much time did you spend working on 14 Medicare Working Group or Medicaid and Medicare 15 Reimbursement Task Force matters? 16 A. Ross is a division in another time 17 zone, so that coordination between Ross and 18 Abbott is not as close as it would be for the 19 Abbott park divisions. 20 I believe they came in a couple of 21 times for each of those groups. I don't remember 22 the content or the agenda or the outcome of those</p>
<p style="text-align: right;">Page 55</p> <p>1 reasonableness, and in those conversations 2 obviously I worked with colleagues, particularly 3 Ginny. 4 After the Corporate Integrity Agreement 5 when she moved to compliance, she had review 6 responsibilities for all reimbursement documents 7 generated by anybody at Ross as a compliance 8 officer. 9 BY MS. ST. PETER-GRIFFITH: 10 Q. Okay. Did you discuss with Virginia 11 Tobiason AWP issues? 12 A. I don't recall. 13 Q. Did you work with any organization 14 within Abbott known as the Medicare Working 15 Group? 16 A. Can you clarify which year that was? 17 Q. Any year. 18 A. I believe there was a group in the mid 19 '90s with that name. I don't remember its 20 membership or the tasks it was assigned. It's 21 eleven years ago. 22 Q. What about the Medicare/Medicaid</p>	<p style="text-align: right;">Page 57</p> <p>1 meetings. 2 Q. What was the purpose of the groups? 3 A. I don't recall. 4 Q. How much time did you spend working on, 5 let's start with Medicare Working Group matters? 6 A. I don't recall. I had many 7 responsibilities over many years. Those specific 8 responsibilities associated with that task force 9 I don't recall. 10 Q. What about the Medicare/Medicaid 11 Reimbursement Task Force, how much time did you 12 spend working on the Medicare/Medicaid 13 Reimbursement Task Force matters? 14 A. I think there were a couple of trips 15 into Chicago. Abbott has my calendar. I don't 16 have my calendar. And it was probably a minor 17 part of my reimbursement work. 18 Q. How often did the Medicare/Medicaid 19 Reimbursement Task Force meet? 20 A. I think only two or three times. 21 Q. Do you know whether there was a regular 22 monthly meeting that was conducted?</p>

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<p style="text-align: right;">Page 58</p> <p>1 A. I don't recall.</p> <p>2 Q. What about the Medicare/Medicaid, I'm</p> <p>3 sorry, the Medicare Working Group, do you recall</p> <p>4 how often that group met?</p> <p>5 A. Can you refresh me on the time of that?</p> <p>6 Q. Sure. That was in the '90s, mid to</p> <p>7 late '90s.</p> <p>8 A. I don't recall that one. I don't</p> <p>9 recall the issues about that group.</p> <p>10 Q. You don't recall any issues working</p> <p>11 with the Medicare Working Group at all?</p> <p>12 A. No.</p> <p>13 Q. Do you recall whether or not</p> <p>14 individuals from Washington, D.C., were involved</p> <p>15 in that group?</p> <p>16 A. It's likely.</p> <p>17 Q. Why do you say it's likely?</p> <p>18 A. One would expect them to be there</p> <p>19 because the Washington office was in charge of</p> <p>20 our lobbying activities, and they were</p> <p>21 responsible for Capital Hill and the Executive</p> <p>22 Department presentations.</p>	<p style="text-align: right;">Page 60</p> <p>1 How often were you in contact with Virginia</p> <p>2 Tobiason?</p> <p>3 A. It varied over time.</p> <p>4 Q. What caused it to vary over time?</p> <p>5 A. Basically our calendars.</p> <p>6 Q. Do you know why she left her position</p> <p>7 in the Compliance Department?</p> <p>8 A. No, I don't.</p> <p>9 Q. What were your job responsibilities</p> <p>10 when you were the senior manager for</p> <p>11 reimbursement?</p> <p>12 A. Those were in the late '90s, and they</p> <p>13 built on the same kinds of responsibilities I had</p> <p>14 before.</p> <p>15 Medicare's competitive bidding program</p> <p>16 was beginning to emerge, and I was quite involved</p> <p>17 in that as an issue. And I continue to be.</p> <p>18 Q. What other responsibilities did you</p> <p>19 have?</p> <p>20 A. We set up a reimbursement corner of</p> <p>21 what's called Ross.com, which is an Internet data</p> <p>22 resource publicly available for customers and for</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. Do you recall giving any presentations</p> <p>2 or preparing any presentations jointly with</p> <p>3 Virginia Tobiason?</p> <p>4 MR. WINCHESTER: Objection to form.</p> <p>5 THE WITNESS: I recall working with</p> <p>6 Ginny, and some of them could have been</p> <p>7 presentations.</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. Do you recall her giving any</p> <p>10 presentations or your jointly giving</p> <p>11 presentations?</p> <p>12 A. I don't recall any that we did</p> <p>13 together. We probably did.</p> <p>14 Q. Would they have been significant to</p> <p>15 you?</p> <p>16 MR. FERGUSON: Object to form.</p> <p>17 THE WITNESS: Not sure how you're using</p> <p>18 the word "significant." It was a part of my job</p> <p>19 that I was doing, assuming I did presentations</p> <p>20 with Ginny.</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. What about, well, let me ask you this:</p>	<p style="text-align: right;">Page 61</p> <p>1 those interested in reimbursement policies</p> <p>2 associated with the Ross products.</p> <p>3 Q. Would AWP information be available on</p> <p>4 Ross.com?</p> <p>5 MR. WINCHESTER: Objection, form.</p> <p>6 THE WITNESS: There were state</p> <p>7 summaries that summarized the state reimbursement</p> <p>8 payment policies. There would not be any</p> <p>9 specific product information, product specific</p> <p>10 AWPs. We're talking as a policy website.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Did you help institute that?</p> <p>13 A. Yes.</p> <p>14 Q. Was that your idea?</p> <p>15 A. Yes.</p> <p>16 Q. What caused you to, why did you come up</p> <p>17 with the idea? Did you identify a need?</p> <p>18 A. Yes.</p> <p>19 MR. FERGUSON: Object to form.</p> <p>20 THE WITNESS: Yes. I identified a</p> <p>21 need.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>

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<p style="text-align: right;">Page 70</p> <p>1 reimbursement of concern to people in the 2 industry. 3 Q. Was AWP reimbursement, the AWP 4 reimbursement, ever a topic of conversation? 5 A. No. 6 Q. Did you ever give presentations to, 7 yourself, or prepare presentations for Abbott 8 clients? 9 A. Yes, for Ross clients. 10 Q. Who do you recall making presentations 11 to? 12 A. There were many. 13 Q. Was Cardinal one of them? 14 A. Cardinal was one of them. 15 Q. Huh? 16 A. Yes. 17 Q. Why did you give a presentation to 18 Cardinal? 19 A. They asked for a presentation. 20 Q. And what did they ask you to present 21 concerning? 22 A. I've not looked at those slides for a</p>	<p style="text-align: right;">Page 72</p> <p>1 BY MS. ST. PETER-GRIFFITH: 2 Q. You were referencing before, Mr. 3 Tootell, the reimbursement manual that you put 4 together. 5 Was that distributed just within Ross, 6 or did it also find distribution to other 7 divisions like HPS, HPD? 8 MR. WINCHESTER: Objection to form. 9 THE WITNESS: The manual was related to 10 enterals, enteral nutritional reimbursement. 11 They may have gotten copies in the other 12 divisions, but it would not have been relevant to 13 their product lines. 14 BY MS. ST. PETER-GRIFFITH: 15 Q. Did you work at all with the Alternate 16 Site Home Infusion Group within the Hospital 17 Business -- 18 MR. WINCHESTER: Objection, form. 19 BY MS. ST. PETER-GRIFFITH: 20 Q. -- Hospital Products Division? 21 MR. WINCHESTER: Sorry. Objection to 22 form.</p>
<p style="text-align: right;">Page 71</p> <p>1 long time. 2 Q. Any other presentations that you can 3 recall? 4 A. No. 5 MS. ST. PETER-GRIFFITH: What time are 6 we at? Why don't we take a break and see if we 7 can get some of the documents. 8 MR. FERGUSON: Okay. 9 THE VIDEOGRAPHER: We are off the 10 record at 10:51 a.m. with the end of Tape No. 1. 11 (WHEREUPON a recess was taken.) 12 THE VIDEOGRAPHER: We are back on the 13 record at 11:14 a.m. with the start of Tape No. 14 2. 15 BY MS. ST. PETER-GRIFFITH: 16 Q. Mr. Tootell, before the break you had 17 referenced that you had prepared a reimbursement 18 manual. 19 A. Yes. 20 Q. Is that a Ross -- 21 (WHEREUPON a discussion was had 22 off the record.)</p>	<p style="text-align: right;">Page 73</p> <p>1 THE WITNESS: Some. 2 BY MS. ST. PETER-GRIFFITH: 3 Q. What was your interaction with Alt. 4 Site Home Infusion? 5 A. Alternate Site folks would be in the 6 same committees that I would be on. You 7 mentioned the Medicare Working Group, the task 8 forces, those groups and members of the Alternate 9 Site working group were part of that formal and 10 informal group. 11 Q. Who do you recall working with from the 12 Alt. Site group? 13 A. Ginny of course, she was the 14 reimbursement director there. I know that Mike 15 Heggie worked for her for a while. Those are all 16 the folks that I remember. 17 Q. Do you recall whether Abbott Home 18 Infusion sold Ross products or distributed Ross 19 products to their clients? 20 A. Yes, they did. 21 Q. Did you interact with anyone in Abbott 22 Alternate Site or Home Infusion concerning the</p>

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<p style="text-align: right;">Page 198</p> <p>1 A. I don't recall.</p> <p>2 Q. Where would the sales force have gone</p> <p>3 to identify what the appropriate practices and</p> <p>4 policies were as endorsed by Abbott?</p> <p>5 A. To their district manager.</p> <p>6 Q. And where would the district manager go</p> <p>7 to identify what Abbott's policies and practices</p> <p>8 were?</p> <p>9 A. To the regional manager.</p> <p>10 Q. And where would the regional manager</p> <p>11 go?</p> <p>12 A. Either to me or to the Legal</p> <p>13 Department.</p> <p>14 Q. Did you have any inquiries from a</p> <p>15 district or regional manager concerning spread</p> <p>16 marketing or reference to AWP by the sales force?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Under Item 2 on this document it says</p> <p>19 "Reimbursement-Based Market Strategies. Do you</p> <p>20 see that? And Item B says "Improve data</p> <p>21 reporting to First Databank and associated data</p> <p>22 warehouses to assure sound calculation of AWP</p>	<p style="text-align: right;">Page 200</p> <p>1 Q. Who did you communicate them to?</p> <p>2 A. Those are privileged communications.</p> <p>3 Q. Other than communications with counsel</p> <p>4 for Abbott -- well, first of all, without telling</p> <p>5 me the substance of the communication, who did</p> <p>6 you make the communication to?</p> <p>7 A. Various people within the Abbott Legal</p> <p>8 Department.</p> <p>9 Q. Who within the Abbott Legal Department?</p> <p>10 You can tell me who you spoke with.</p> <p>11 MR. FERGUSON: Yes.</p> <p>12 MS. ST. PETER-GRIFFITH: Just not the</p> <p>13 substance of the conversations.</p> <p>14 THE WITNESS: Okay. Melissa Penslavey,</p> <p>15 Cliff Berman. I don't remember others, other</p> <p>16 names.</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. Were there others, but you just can't</p> <p>19 recall?</p> <p>20 A. There were others, but I can't recall.</p> <p>21 Q. How many others? Can you guesstimate?</p> <p>22 A. I can't guess.</p>
<p style="text-align: right;">Page 199</p> <p>1 rates." What did you mean by that?</p> <p>2 A. To be sure that the data was accurate</p> <p>3 as provided to the First Databank and associated</p> <p>4 compendia.</p> <p>5 Q. And what did you mean by "to assure</p> <p>6 sound calculation of AWP rates"?</p> <p>7 MR. FERGUSON: Object to form.</p> <p>8 THE WITNESS: They needed to have</p> <p>9 accurate data to make a calculation of the rates.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Did you have a concern that there was</p> <p>12 too large of a spread on Ross products?</p> <p>13 A. A personal concern?</p> <p>14 Q. Yes.</p> <p>15 A. I had a personal concern.</p> <p>16 Q. Why did you have that concern?</p> <p>17 A. I was concerned about the potential</p> <p>18 legal exposures and potential negative</p> <p>19 consequences for the company should these issues</p> <p>20 stretch to our product line.</p> <p>21 Q. Did you communicate those concerns?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 201</p> <p>1 Q. Was it under five?</p> <p>2 A. Approximately.</p> <p>3 Q. Prior to the implementation of the CIA,</p> <p>4 were your concerns addressed?</p> <p>5 MR. FERGUSON: Object to form.</p> <p>6 MR. WINCHESTER: Objection, form.</p> <p>7 MR. FERGUSON: I don't want you to, if</p> <p>8 answering that question requires you to get into</p> <p>9 the substance of any legal communications, then I</p> <p>10 don't want you to answer the question.</p> <p>11 THE WITNESS: I believe answering that</p> <p>12 question would open up --</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. I'm not interested in what counsel</p> <p>15 communicated to you.</p> <p>16 I want to find out whether Ross</p> <p>17 institutionally addressed your concerns.</p> <p>18 MR. WINCHESTER: Same objection.</p> <p>19 THE WITNESS: I don't understand your</p> <p>20 verb. What do you mean by "addressed"?</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Huh?</p>

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